

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11435

- - - - -x

In the Matter of:

CHARTER COMMUNICATIONS, INC.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 20, 2009

10:00 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1  
2 HEARING re Motion Filed by the Debtors for an Order Determining  
3 Adequate Assurance of Payment for Future Utility Services.

4  
5 HEARING re Motion Filed by the Debtors for an Order Authorizing  
6 and Approving Procedures for Settling Certain Claims and Causes  
7 of Action Brought By Or Against the Debtors.

8  
9 HEARING re Motion Filed by the Debtors for Entry of An Order  
10 Authorizing the Employment and Retention of Hogan & Hartson LLP  
11 as Special Counsel to the Debtors Effective Nunc Pro Tunc to  
12 the Petition Date.

13  
14 HEARING re Motion Filed by the Debtors for Entry of an Order  
15 Authorizing the Employment and Retention of Sherman & Howard  
16 L.L.C. as Mergers and Acquisitions and Commercial Operations  
17 Counsel to the Debtors Effective Nunc Pro Tunc to the Petition  
18 Date.

19  
20 HEARING re Motion Filed by the Debtors for Entry of an Order  
21 Authorizing the Employment and Retention of Marshall, Gerstein  
22 & Borun LLP as Intellectual Property Counsel to the Debtors  
23 Effective Nunc Pro Tune to the Petition Date.

1 HEARING re Motion Filed by the Debtors for Entry of an Order  
2 Authorizing the Employment and Retention of KPMG LLP as Their  
3 Auditor Nunc Pro Tunc to the Petition Date.

4  
5 HEARING re Motion Filed by the Debtors for Entry of an Order  
6 Amending Final Order Establishing Notification and Hearing  
7 Procedures for Transfers of Common Stock.

8  
9 HEARING re Motion Filed by the Official Committee Of Unsecured  
10 Creditors Regarding Creditor Access To Information.

11  
12 HEARING re Motion Filed by the Official Committee Of Unsecured  
13 Creditors To Retain And Employ Ropes & Gray LLP As Counsel,  
14 Nunc Pro Tunc To April 15, 2009.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 Transcribed by: Penina Wolicki

A P P E A R A N C E S :

KIRKLAND & ELLIS LLP

Attorneys for Debtor

Citigroup Center

153 East 53rd Street

New York, NY 10022

BY: STEPHEN E. HESSLER, ESQ.

CINDY Y. CHEN, ESQ.

KIRKLAND & ELLIS LLP

Attorneys for Debtor

300 North LaSalle Street

Chicago, IL 60654

BY: RAY C. SCHROCK, ESQ.

ROPES & GRAY LLP

Attorneys for Official Committee of Creditors

1211 Avenue of the Americas

New York, NY 10036

BY: MARK R. SOMERSTEIN, ESQ.

1  
2 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP  
3 Special Conflicts Counsel for Debtors  
4 101 Park Avenue  
5 New York, NY 10178  
6

7 BY: L.P. HARRISON III, ESQ.  
8  
9

10 U.S. DEPARTMENT OF JUSTICE  
11 Office of the U.S. Trustee  
12 33 Whitehall Street  
13 21st Floor  
14 New York, NY 10004  
15

16 BY: PAUL SCHWARTZBERG, ESQ.  
17  
18

19 HOGAN & HARTSON LLP  
20 Proposed Special Counsel to Debtors  
21 875 3rd Avenue  
22 New York, NY 10022  
23

24 BY: DAVID DUNN, ESQ. (TELEPHONICALLY)  
25

1  
2 MARSHALL GERSTEIN & BORUN LLP

3 Proposed Intellectual Property Counsel to Debtors

4 233 South Wacker Drive

5 Chicago, IL 60606

6  
7 BY: WILLIAM J. KRAMER, ESQ. (TELEPHONICALLY)

8  
9 ARNALL, GOLDEN & GREGORY, LLP

10 Attorneys for Verizon

11 171 17th Street NW

12 Suite 2100

13 Atlanta, GA 30363

14  
15 BY: FRANK N. WHITE, ESQ. (TELEPHONICALLY)

16 DARRYL LADDIN, ESQ. (TELEPHONICALLY)

17  
18 ALSO PRESENT:

19 GERALD J. CARLSON, KPMG LLP (TELEPHONICALLY)

20 MARK FULFORD, (TELEPHONICALLY)

## P R O C E E D I N G S

THE COURT: Be seated please. Good morning.

MR. HESSLER: Good morning, Your Honor. Steve Hessler of Kirkland & Ellis on behalf of the debtors. Today is the debtors' second omnibus hearing. There are nine motions or applications on the agenda for this morning, including two filed by the unsecured creditors' committee. As of now, Your Honor, it is our understanding that all of these motions are going forward this morning, unopposed. With Your Honor's permission, we'll proceed in the order of the filed agenda?

THE COURT: That would be fine.

MR. HESSLER: Your Honor, item number 1 on the agenda is the debtors' request for a final order on our utilities motion. The relief sought in the proposed final order was granted on an interim basis at the debtors' second day hearing on April 15th. Upon the Court's entry of the interim utilities order, the debtors properly served by overnight mail to their approximately 1,500 utility providers, and by e-mail and overnight mail to the core 2002 notice parties, copies of the utilities motion, the interim order, including the adequate assurance and objection procedures, and the notice of the final hearing.

Pursuant to the procedures, Your Honor, the debtors received approximately forty requests for additional adequate assurance before the May 15th deadline set forth in the interim

1 order. We're pleased to note that to date, the debtors have  
2 reached agreement with nearly all of the requesting utilities  
3 and are in the process of finalizing or negotiating agreements  
4 with the remaining few.

5 As noted on the agenda, Your Honor, three responses  
6 were filed to the utility motion. The first two by Alabama  
7 Power at docket number 145 and A&M Electrical Cooperative, at  
8 docket number 146, were adjourned by consent of the parties  
9 from the April 15th hearing to today. Both objections have  
10 been resolved and withdrawn. The third response, which was  
11 filed on behalf of a consortium of five utilities in South  
12 Carolina and is at docket number 316, was filed in advance of  
13 today's hearing. That also has been resolved and withdrawn,  
14 Your Honor.

15 With that, Your Honor, I would note that my colleague,  
16 Lynn Harrison from Curtis Mallet, the debtors' conflict  
17 counsel, has a statement for the record.

18 THE COURT: Mr. Harrison, why don't you come forward.

19 MR. HARRISON: Thank you, Your Honor. Your Honor, for  
20 the record, if it pleases the Court, Lynn Harrison of Curtis,  
21 Mallet-Prevost, Colt & Mosle, conflicts counsel for the  
22 debtors. As was reflected in the transcript of the last  
23 hearing regarding the utilities motion, Your Honor, the debtors  
24 and Verizon Communications and its affiliates are in  
25 negotiations regarding the adequate assurance for future



1 utility services.

2 I believe that the parties are close to an agreement,  
3 Your Honor. To allow that process to proceed, the parties have  
4 agreed to adjourn the utilities motion as to Verizon and its  
5 affiliates until June 17th at 10:00. Provided, however, Your  
6 Honor, that in the unlikely event that the parties are unable  
7 to reach an agreement, the parties have agreed that Verizon may  
8 seek a hearing on at least five-days' business notice, subject,  
9 of course, Your Honor, to the Court's calendar, to request  
10 relief regarding the adequate assurance of future utility  
11 services.

12 Thus, Your Honor, the order that will be handed up  
13 today will not encompass the Verizon entities. I do believe  
14 that counsel for Verizon is on the phone and can confirm my  
15 statements for the record. Mr. White?

16 THE COURT: Is there anyone on the telephone  
17 representing Verizon?

18 MR. WHITE: Your Honor, can you hear me?

19 THE COURT: Now I can.

20 MR. WHITE: Okay. Thank you, Your Honor. Frank White  
21 of Arnall, Golden & Gregory, for Verizon. And I can confirm  
22 the summary of the agreement between the debtors and Verizon  
23 just provided to the Court is accurate.

24 THE COURT: Thank you.

25 MR. HARRISON: Thank you, Your Honor.

1 MR. HESSLER: Your Honor, the debtors request that the  
2 proposed order be entered.

3 THE COURT: The order will be entered.

4 MR. HESSLER: Your Honor, the next item on the agenda  
5 is number 2, the debtors' motion to authorize procedures to  
6 settle claim brought by or against the debtors for de minimis  
7 recovery amounts. The proposed procedures are set forth in  
8 detail in the motion. But described very generally, the  
9 debtors, in consultation with the unsecured creditors'  
10 committee, may enter into settlements for amounts under 250,000  
11 dollars without further notice or approval.

12 For settlement amounts above 250,000 dollars but less  
13 than 2 million dollars, the debtors will provide written notice  
14 of the settlement to the U.S. Trustee, the creditors'  
15 committee, the agents for the first, second, and third lien  
16 credit facilities, the crossover committee of CCH1 and 2  
17 noteholders, and Vulcan. If no party objections within ten  
18 days the settlement shall become final. If a party does  
19 object, and the debtors cannot resolve the objection, the  
20 proposed settlement will be brought before this Court for final  
21 approval.

22 The debtors believe these procedures, by reducing the  
23 expense involved in filing separate Rule 9019 motions for every  
24 postpetition settlement, are beneficial to their estates, while  
25 at the same time, protecting the notice and objection rights of

1 creditors. The debtors note similar procedures have been  
2 approved in other large Chapter 11 cases in this district. We  
3 further note, Your Honor, that the creditors' committee  
4 requested and we did make a few changes to the proposed order  
5 to clarify the consultation with the creditors' committee that  
6 the debtors will be entering into. No party, Your Honor, has  
7 objected to the proposed procedures, and the debtors would ask  
8 that the order be entered.

9 THE COURT: I'm prepared to do that. I'd just like to  
10 hear from the creditors' committee regarding its position with  
11 respect to this motion.

12 MR. SOMERSTEIN: Good morning Your Honor. Mark  
13 Somerstein, Ropes & Gray, for the creditors' committee. Your  
14 Honor, the motion is acceptable to us. We've made certain  
15 comments to the order to accommodate certain notice procedures  
16 to the committee. We believe we'll have an appropriate  
17 opportunity to review any settlements with the debtors if they  
18 were to propose them. So we're comfortable with the order at  
19 this point, Your Honor.

20 THE COURT: Fine.

21 MR. SOMERSTEIN: Thank you.

22 THE COURT: Thank you. And then I have one question  
23 for the debtor. It's really as much as anything a matter of  
24 curiosity on my part as to how the break points were developed  
25 at 250,000 and 2 million for purposes of settlement. Is there

1 some statistical data that the company or its advisors  
2 referenced to determine where settlements of claims tend to  
3 fall, or were these simply numbers either arrived at through  
4 the exercise of good judgment or guesswork?

5 MR. HESSLER: It was twofold, Your Honor. One, it was  
6 a discussion with the company's legal counsel and the relevant  
7 business people to determine what the potential range of likely  
8 postpetition settlements would be, like what would work from  
9 the company from a business perspective. In addition, we  
10 consulted the orders that had otherwise been entered in similar  
11 cases of this size. For instance, we would note that in  
12 Calpine, a case of similar size, their ranges were identical,  
13 up to 250,000 and 250,000 to 2 million.

14 THE COURT: Okay. I mean, I'm perfectly happy to  
15 carry that forward, recognizing that there's no particular  
16 logic to these numbers other than that they worked in the past  
17 and perhaps represent a reasonable prediction as to where  
18 things may fall. And as long as it's acceptable to the  
19 creditors' committee, it's acceptable to me.

20 MR. HESSLER: Thank you, Your Honor. Your Honor, the  
21 next three items on the agenda are retention applications for  
22 various counsel to the debtors. Number 3 is the application to  
23 retain Hogan & Hartson as special counsel for programming,  
24 litigation, and regulatory advice to the debtors. Number 4 is  
25 the application to retain Sherman & Howard a M&A and commercial

1 operations counsel to the debtors. Number 5 is the application  
2 to retain Marshall Gerstein & Borun as intellectual property  
3 counsel to the debtors.

4 Your Honor, all of these counsel provide critical and  
5 discrete services to the debtors. All of the counsel have  
6 confirmed that their efforts will be coordinated to ensure  
7 there is no duplication of efforts with the debtors' other  
8 retained professionals in this case. Your Honor, we would note  
9 for the record that copies of these applications were provided  
10 to the U.S. Trustee prior to our filing them. Mr. Schwartzberg  
11 did request certain clarifications and changes, all of which we  
12 did incorporate into the proposed orders. In addition, Your  
13 Honor, no objections were filed to any of these retention  
14 applications. The debtors request that the respective orders  
15 be entered.

16 THE COURT: I'm prepared to do that. I had a couple  
17 of reactions. One, the Hogan & Hartson application indicated  
18 that there would be no professional who would work on this  
19 matter with rates higher than 950 dollars per hour, which seems  
20 like it's hardly a concession. I noted that the Sherman &  
21 Howard application references blended hourly rates that seem to  
22 be very favorable. And I noted that there's a prepetition  
23 claim for 795,000 dollars held by Marshall Gerstein & Borun.  
24 And that probably caught my eye as an issue the most. I'm  
25 interested in knowing from Mr. Schwartzberg what his office's

1 position is with respect to a professional being retained in  
2 this case that holds a significant prepetition claim?

3 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg for  
4 the U.S. Trustee's Office. This is a 327(e) application. And  
5 I don't think the disinterestedness standard applies. It's no  
6 adverse interest, we saw no adverse interest, so we didn't have  
7 a position, and we defer to the committee on it.

8 THE COURT: Okay. What does the committee have to  
9 say?

10 MR. SOMERSTEIN: Again, for the record, Your Honor,  
11 Mark Somerstein, Ropes & Gray. We -- I agree with the legal  
12 standard that was just expressed by Mr. Schwartzberg. So we  
13 didn't have a concern in that regard either.

14 THE COURT: Okay. It caught my eye, however, and one  
15 of the things that I think is worth noting is that when  
16 professionals are being retained under different subsections of  
17 the same provision of the Bankruptcy Code, and different  
18 outcomes result from that selection, it leads to parties  
19 choosing those sections in order to preserve their claims. And  
20 I'm simply noting it as something that I suppose  
21 professionals do on occasion, in order to hold onto their  
22 clients and also hold onto their claims. All of these will be  
23 approved.

24 MR. HESSLER: Thank you, Your Honor. Your Honor, at  
25 this point in the agenda, I would like to cede the podium to my

1 colleague, Cindy Chen for the next application.

2 THE COURT: Okay.

3 MS. CHEN: Good morning, Your Honor. Cindy Chen of  
4 Kirkland & Ellis on behalf of the debtors. Item 6 on the  
5 agenda is the application to retain KPMG LLP as the debtors'  
6 auditors. Your Honor, no objections were filed to this  
7 retention application. The debtors selected KPMG because it  
8 has diverse experience and extensive knowledge of accounting,  
9 taxation and operational controls for large, sophisticated  
10 companies, both in and out of Chapter 11. Indeed, the debtors  
11 have employed KPMG since 2002. As such, KPMG is familiar with  
12 the debtors' books, records and financial information and is  
13 thus qualified to continue providing audit services to the  
14 debtors.

15 KPMG's requested compensation will be based on hours  
16 actually expended by each assigned staff member, at the staff  
17 members' hourly rate, and KPMG has confirmed that it will not  
18 duplicate the services rendered by other retained  
19 professionals. In response to the United States Trustee's  
20 request, KPMG has filed a supplement on April 29, 2009  
21 disclosing the percentage of revenue of certain KPMG clients  
22 who are parties in interest to the debtors' bankruptcy  
23 proceeding. Accordingly, Your Honor, the debtors' believe  
24 there are no outstanding issues as to this application, and  
25 would ask that this order be entered.

1 THE COURT: Is the U.S. Trustee satisfied?

2 MR. SCHWARTZBERG: Paul Schwartzberg for the U.S.  
3 Trustee's Office. We have no objection to the application as  
4 announced.

5 THE COURT: All right. It's approved.

6 MS. CHEN: Thank you, Your Honor. With that, I will  
7 turn the podium over to my colleague, Steve Hessler.

8 MR. HESSLER: Your Honor, the final motion of the  
9 debtors on today's agenda is number 7, seeking amendment of the  
10 final NOL order. As an initial matter, Your Honor, we  
11 appreciate the Court entering, yesterday, our motion to shorten  
12 notice and hearing this motion on an expedited basis.

13 THE COURT: It's pretty short notice.

14 MR. HESSLER: Indeed it was, Your Honor. We do note  
15 that the debtors became aware of the need for the amended order  
16 within just the last few days, and we did endeavor to get a  
17 motion on file as soon as possible. At our first and second  
18 day hearings, the Court entered interim and final orders that  
19 provided any entity that has beneficial ownership of at least  
20 twenty million shares of Class A common stock or twenty million  
21 shares of Class A and B common stock in the aggregate, will  
22 constitute a five-percent shareholder of Charter and is subject  
23 to the trading restrictions designed to protect the debtors'  
24 NOLs.

25 The twenty million share threshold was based on the



1 debtors' understanding on the petition date, which was based on  
2 the most recently available figures as of December 31, 2008,  
3 that approximately 411 million shares of Charter common stock  
4 was outstanding. Recently, as the debtors were finalizing  
5 certain regulatory filings, including their 10-Q, the debtors  
6 learned that between January 1st and April 20th, the number of  
7 outstanding shares had decreased by approximately 28 million,  
8 to 383 million shares. Accordingly, to maintain the trading  
9 restrictions that protect the debtors' highly valuable tax  
10 attributes, the debtors are requesting a downward adjustment of  
11 the beneficial ownership threshold that constitutes a five-  
12 percent shareholder from 20 million shares to 18 million  
13 shares.

14 If the order is entered this morning, Your Honor, the  
15 amended NOL final order will be served by overnight mail  
16 immediately to the same parties that received notice of the NOL  
17 final order, including holders of the equivalent of more than  
18 five million shares of common stock and the transfer agents for  
19 any common stock. Courtesy e-mails will also be sent  
20 immediately to the appropriate brokerage firms.

21 Your Honor, the objection deadline was at the  
22 beginning of the hearing this morning. The debtors are not  
23 aware of any objections to the proposed amendment.

24 THE COURT: Well, let's find out. It's now 10:15. Is  
25 there anyone here who objects to the proposed amendment of the

1 final order establishing notification and hearing procedures  
2 for transfers of common stock? Is there anyone on the phone  
3 who has anything to say about it? Apparently there are no  
4 objections. Does the committee have any position on this?

5 MR. SOMERSTEIN: Your Honor, the committee supports  
6 the debtors in this regard.

7 THE COURT: Okay. I view this as, even though  
8 happening on very short notice, largely a conforming change to  
9 the order that was originally entered, both as an interim and a  
10 final order, on the assumption that the float constituted a  
11 certain number of shares. Since the facts have changed and the  
12 denominator has become smaller, the five-percent calculation  
13 has to change with it. And so I view this as a largely  
14 mathematical conforming of the order to the actual mathematical  
15 reality of the number of shares that are currently outstanding.  
16 I have no problem approving this as presented, even though the  
17 notice is short.

18 MR. HESSLER: Thank you, Your Honor. Your Honor, one  
19 matter I should have noted at the beginning. Presumably, you'd  
20 prefer us to tender all orders at once?

21 THE COURT: Yes.

22 MR. HESSLER: At the conclusion of the hearing? Your  
23 Honor, before ceding the podium, there's one final housekeeping  
24 matter that the debtors did want to note for the record. At  
25 our disclosure statement hearing on May 5th, my partner Paul

1     Basta explained to the Court that there were a few cleanup  
2     changes that needed to be made to the disclosure statement and  
3     exhibits. Those changes were made. The final disclosure  
4     statement that we filed on May 7th did not include the updated  
5     exhibits with the filing. The updated exhibits were included  
6     in the solicitation packages that were sent to creditors last  
7     week.

8             Nonetheless, to ensure that the docket reflects the  
9     final version of the disclosure statement that went out for  
10    solicitation with the updated exhibits, the debtors do intend  
11    to file those updated exhibits with the Court today. We wanted  
12    to mention this on the record just so that the Court and the  
13    parties in interest in attendance, that there's no confusion as  
14    to why those exhibits are being filed today.

15            THE COURT: That's fine. Thank you.

16            MR. HESSLER: Thank you, Your Honor. Unless the Court  
17    has any further questions for the debtors, we'll cede the  
18    podium to the creditors' committee.

19            THE COURT: I have no further questions at this time.

20            MR. HESSLER: Thank you, Your Honor.

21            MR. SOMERSTEIN: Good morning, Your Honor. Mark  
22    Somerstein, Ropes & Gray for the creditors' committee. Your  
23    Honor, as Mr. Hessler indicated, there are two unopposed  
24    motions that the committee's presenting today. The first on  
25    the agenda is our request, and it's something that Your Honor

1 is familiar with, our request for a -- our motion regarding  
2 access to information. And the order that we request would  
3 establish a protocol for providing information to unsecured  
4 creditors in the case.

5 I'm going to hand to Mr. Hessler and Ms. Chen and then  
6 hand up to Your Honor, if I can, a black-line. This black-line  
7 reflects changes made to the proposed order. They were changes  
8 requested by the debtors. They now form what we believe is a  
9 consensual order between the debtors and the committee with  
10 respect to the information protocol we're asking for.

11 THE COURT: All right. You can distribute that, and  
12 you may approach. Thank you.

13 MR. SOMERSTEIN: I think, Judge, that there are very  
14 few changes. And I think I can characterize them in two ways.  
15 The first is just to make sure -- and this is reflected on page  
16 2, and then there are a few other places where it's reflected.  
17 It's reflected also on page 4, that in our -- our bylaws have a  
18 confidentiality provision. Your Honor is very familiar with  
19 these issues. So that the debtor wanted to make sure that  
20 information that would be confidential in our bylaws would be  
21 included as confidential information under this protocol. We  
22 had no intention to carve that out, so we've included it.

23 THE COURT: Understood.

24 MR. SOMERSTEIN: Then, Your Honor, there are, on page  
25 4 and then again on page 5, the debtors requested that to the

1 extent that we do fulfill an information request, that we get a  
2 written acknowledgement from the creditor that we provided  
3 information to, acknowledging their confidentiality  
4 obligations. We're fine with that. So we added that. Lastly,  
5 Your Honor, on page 6, decretal paragraph 4, just a little  
6 clarifying language that the protocol supersedes the statutory  
7 requirements under Section 1102(b)(3). And I think those are  
8 really the only changes that we made.

9 THE COURT: That's fine.

10 MR. SOMERSTEIN: Does Your Honor have any questions  
11 regarding the motion?

12 THE COURT: I don't. Orders of this sort are, at this  
13 point, entirely conventional in large Chapter 11 cases in this  
14 district. And maybe this is the new paradigm with these  
15 updates. But I view this as relatively routine and important  
16 to the functioning of creditors' committees. And I approve it.

17 MR. SOMERSTEIN: Thank you, Your Honor. Lastly on the  
18 agenda for today is the committee's motion to retain Ropes &  
19 Gray as its counsel. Your Honor, I have no comments save for  
20 one, which is that in reviewing my declaration last night in  
21 preparing for the hearing, I noticed that one change I had made  
22 didn't make it into the final version. That is to reflect that  
23 HSBC Bank USA, which happens to be now a committee member, is  
24 denominated in the exhibit as a former client of the firm.  
25 It's a current client of the firm. We represent them on

1 matters totally unrelated to Charter. Though they happen to be  
2 a committee member now, at the time that this was filed, they  
3 actually weren't. They were appointed after. It simply didn't  
4 make it, for whatever reason, into the final draft. It's not  
5 material. HSBC, the business that we get is not in excess of  
6 one percent of the revenue of the firm. But I did want to make  
7 that clear. We will file a supplemental declaration by --  
8 certainly by the end of the week, if not by tomorrow,  
9 reflecting that HSBC Bank USA is a current client of the firm.

10 THE COURT: Thank you for the clarification. The  
11 application to engage Ropes & Gray as counsel to the committee  
12 is approved.

13 MR. SOMERSTEIN: Thank you, Your Honor. The committee  
14 has nothing further.

15 MR. HESSLER: The debtors have nothing further, Your  
16 Honor.

17 THE COURT: It seems like this hearing is at an end.  
18 Let me just ask if there's anything going on in the litigation  
19 that is reportable? There have been any number of discovery  
20 conferences and discovery issues, and then there has been  
21 complete radio silence as between the litigants and the Court  
22 concerning those disputes. Am I correct in concluding that at  
23 least as to ongoing discovery, matters are proceeding without  
24 major conflict? Or is that not the right assumption? And if  
25 you're not prepared to comment on it, that's fine too.

1 MR. SCHROCK: Your Honor, Ray Schrock of Kirkland &  
2 Ellis on behalf of the debtors. That's certainly our  
3 understanding. The formal discovery is proceeding. The  
4 parties -- I do see occasional missives come across my desk.  
5 But we'll promptly check with our litigation partners and see  
6 if there's anything to report to the Court about that.

7 THE COURT: I realize it wasn't on the agenda for  
8 today's hearing. It's just that one of the things that happens  
9 when you're watching a case like this from my side of the bench  
10 is that you see conflict on occasion --

11 MR. SCHROCK: Yes.

12 THE COURT: -- through correspondence, discovery  
13 conferences and the like. The conferences take place, and then  
14 that's it. I don't hear anymore. I was just trying to  
15 understand if the silence should be interpreted as a peaceful  
16 resolution of the conflict. I hope that's true.

17 MR. SCHROCK: Your Honor, certainly that's my  
18 understanding. But I'm certain that if anything arises, we'll  
19 make the Court aware of it.

20 THE COURT: I'm confident that will happen. All  
21 right. Thank you. We're adjourned.

22 MR. SCHROCK: Thank you, Your Honor.

23 MR. HESSLER: Thank you, Your Honor.

24 (Proceedings concluded at 10:24 a.m.)  
25

## I N D E X

## RULINGS

	Page	Line
--	------	------

Order Determining	10	3
-------------------	----	---

Adequate Assurance of

Payment for Future

Utility Services Will be

Entered

Order Authorizing and	12	15
-----------------------	----	----

Approving Procedures for

Settling Certain Claims

Approved

Order Authorizing the	14	22
-----------------------	----	----

Employment and Retention

of Hogan & Hartson LLP

Approved

Order Authorizing the	14	22
-----------------------	----	----

Employment and Retention

of Sherman & Howard

L.L.C. Approved



1	RULINGS (continued)		
2		Page	Line
3	Order Authorizing the	14	22
4	Employment and Retention		
5	of Marshall, Gerstein &		
6	Borun LLP Approved		
7	Order Authorizing the	16	5
8	Employment and Retention		
9	of KPMG LLP Approved		
10	Order Amending Final	18	16
11	Order Establishing		
12	Notification and Hearing		
13	Procedures for Transfers		
14	of Common Stock Approved		
15	Motion of the Committee	21	16
16	Regarding Creditor		
17	Access To Information		
18	Approved		
19	Committee's Motion To	22	11
20	Retain And Employ Ropes		
21	& Gray LLP Approved		
22			
23			
24			
25			

## C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

---

Penina Wolicki

Veritext LLC

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: May 21, 2009